IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

United States of America,	
Plaintiff,	
v.	**Civil Action No.** 5:13CV00086
All articles of food in various size and type containers, including non-integral metal and glass containers, including ingredients, in-process, and finished goods made from interstate ingredients, that are located anywhere on the premises of Royal Cup, Inc., 1300 Hopeman Parkway, Waynesboro, Virginia, to which are affixed labels bearing, among other things, the name and address of the manufacturer, packer, or distributor located outside the Commonwealth of Virginia, or which are otherwise determined to consist in whole or in part of ingredients that have originated outside of the Commonwealth of Virginia,	**COMPLAINT FOR FORFEITURE IN REM** **FILED IN CAMERA AND UNDER SEAL**
Defendants.	

Comes now the United States of America by Timothy J. Heaphy, United States Attorney for the Western District of Virginia, and represents to the Court:

NATURE OF THE ACTION

1. That this Complaint is filed by the United States of America, and requests seizure and condemnation of Defendant articles of food, as described in the caption, in accordance with the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. § 301 et seq.

2. That there are at Waynesboro, VA, in the possession of Royal Cup, Inc., 1300 Hopeman Parkway ("the firm"), or elsewhere within the jurisdiction of this Court, articles of

food, including ingredients, in-process, and finished food products, as described in the caption, which articles consist in whole or in part of ingredients that were shipped in interstate commerce from outside the Commonwealth of Virginia.

JURISDICTION AND VENUE

3. Plaintiff brings this action *in rem* in its own right to condemn and forfeit the Defendant property. This Court has jurisdiction over an action commenced by the United States under 28 U.S.C. § 1345 and 21 U.S.C. § 334, which provides the Court with jurisdiction over seizures brought under the Act.

4. This Court has *in rem* jurisdiction over the Defendant property because the Defendants are located in the Western District of Virginia. Upon filing this Complaint, the Plaintiff requests that the Court issue an arrest warrant *in rem* pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims ("Supplemental Rules") of the Federal Rules of Civil Procedure, Rule G(3)(b), which the Plaintiff will execute upon the property pursuant to Supplemental Rule G(3).

BASIS FOR FORFEITURE

5. The articles are adulterated while held for sale after shipment of one or more of their ingredients in interstate commerce, within the meaning of the Act, 21 U.S.C. § 342(a)(4), in that they have been prepared, packed, and held under insanitary conditions whereby they may have become contaminated with filth.

6. By reason of the foregoing, the articles are held illegally within the jurisdiction of this Court and are liable to seizure and condemnation pursuant to 21 U.S.C. § 334.

FACTS

7. The Food and Drug Administration (FDA) conducted an inspection of the firm on June 25 through July 17, 2013. The inspection revealed active and widespread insect and rodent activity within the facility. During the inspection, FDA investigators observed live and dead insects on food and food packages; dead mice; rodent excreta pellets around food; trash stored within the facility; unclean equipment; structural defects and poor sanitary practices. Effective measures were not being taken to exclude pests from the facility and protect against the contamination, or to protect food, food contact surfaces, and food packaging materials from filth contamination. At the end of the inspection, the investigators issued a form FDA 483 (Inspectional Observations) to the owner notifying him of the objectionable conditions. The owner's response to the form FDA 483 was inadequate since FDA investigators observed continuing insect and rodent activity within the facility on July 17, 2013, after the firm's corrections to address the pest activity were alleged to be complete.

8. FDA laboratory analysis of samples collected during the inspection confirmed the presence of insects and rodent excreta pellets.

9. The articles are being held under a Notice of Seizure issued by the Commonwealth of Virginia Department of Agriculture and Consumer Services (VDACS). Since VDACS would not order the firm to destroy the articles, this action does not prevent the products from eventual delivery in interstate commerce.

We request that process issue against the articles; that all persons having any interest in the articles be cited to appear herein and answer the allegations of the complaint; that this Court decree the condemnation of the articles and grant Plaintiff the costs of this proceeding against the

claimant of the articles; that the articles be disposed of as this Court may direct pursuant to the provisions of the Act; and that Plaintiff have such other and further relief as the case may require.

Respectfully submitted,

TIMOTHY J. HEAPHY
United States Attorney
Western District of Virginia

Date: September 11, 2013

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VERIFICATION

I am CARRIE L. DOUPNIK, an investigator for the US Food and Drug Administration (FDA), United States Department of Health and Human Services, and I am familiar with the investigation of this case. I hereby verify and declare under penalty of perjury that I have read the foregoing Verified Complaint and know the contents thereof, and the matters contained in the Verified Complaint are true to my knowledge.

The sources of my knowledge and information and the grounds of my belief are the official files and records of the FDA, as well as my investigation of this case.

I verify and declare under penalty of perjury that the foregoing is true and correct.

Executed on 9th day of September, 2013.

Carrie L. Doupnik
Investigator
Food and Drug Administration
Department of Health and Human Services